

**SCOTTISH BORDERS COUNCIL
LOCAL REVIEW BODY DECISION NOTICE**

**APPEAL UNDER SECTION 43A (8) OF THE TOWN AND COUNTRY PLANNING
(SCOTLAND) ACT 1997**

**THE TOWN AND COUNTRY PLANNING (SCHEMES OF DELEGATION AND LOCAL
REVIEW PROCEDURE) (SCOTLAND) REGULATIONS 2013**

Local Review Reference: 23/00010/RREF

Planning Application Reference: 22/01811/FUL

Development Proposal: Modification of Condition No. 1 of planning permission
15/01355/FUL to allow the holiday chalet to be occupied as dwellinghouse

Location: Land at Disused Railway Line, Rachan, Broughton

Applicant: Mr I Maxwell

DECISION

The Local Review Body upholds the decision of the appointed officer and refuses planning permission as explained in this decision notice and on the following grounds:

1. The development would be contrary to policies PMD1 and HD2 of the Local Development Plan 2016 and supplementary planning guidance on New Housing in the Borders Countryside in that no information has been submitted to demonstrate that the proposal is incapable of being operated as a viable holiday accommodation business. Granting permission would result in unsustainable development in a rural location. The resultant dwellinghouse would be isolated and physically segregated from the dispersed Rachan building group. As a result, the development would represent sporadic and unjustified housing development in the countryside. No overriding case for the development as proposed has been substantiated. This conflict with the development plan is not overridden by other material considerations.

DEVELOPMENT PROPOSAL

The application relates to

The application drawings and documentation consisted of the following:

Plan Type	Plan Reference No.
Location plan	14-032/PP/006

PRELIMINARY MATTERS

The Local Review Body considered the review, which had been competently made, under section 43A (8) of the Town & Country Planning (Scotland) Act 1997 at its meeting on 19th June 2023.

After examining the review documentation at that meeting, which included a) Submission by Officer and Applicant response on NPF4 statements; b) Notice of Review (including the Decision Notice and Officer's Report); c) Refused drawings; d) Additional information; e) Support comments; f) Consultation replies; g) Objections; and h) List of Policies.

REASONING

The determining issues in this Review were:

- (1) whether the proposal would be in keeping with the Development Plan, and
- (2) whether there were any material considerations which would justify departure from the Development Plan.

The Development Plan comprises: Scottish Borders Local Development Plan 2016 and National Planning Framework 4. The LRB considered that the relevant listed policies were:

- Local Development Plan policies: PMD1, HD2 and ED7
- National Planning Framework 4 Policies: 16, 17 and 30

Other Material Considerations

- SBC Supplementary Planning Guidance New housing in the Borders Countryside

The Review Body noted that this was a section 42 application for the deletion of condition 1 of planning permission 15/01355/FUL to allow the holiday chalet built on land at the disused railway line at Rachan, Broughton to be occupied as dwellinghouse.

Members firstly considered whether there was a building group in the vicinity of the site under Clause A of Policy HD2. After considering all of the submissions in this regard, they were satisfied there was a dispersed building group at Rachan, which is characterised by the sense of place created by the Tomb Plantation, the former sawmill site, the pond and the existing estate dwellings.

In considering the suitability of adding to this group, they did not accept that the site, formed part of this wider dispersed group or would be within its identifiable limits. Whilst the Review Body acknowledged the points advanced by the applicant in contending that the site was part of the sense of place at the group, Members disagreed. In coming to this view, they exercised their reasonable and proportionate planning judgement and gave weight to the interpretation of the nature of the building group.

The Review Body noted that the reason residential approvals were granted at such residential sites is usually due to their connection with justifiable business uses such as the keeping of rare sheep or in the current case for holiday use. Members considered that the deletion of the occupancy condition in essence removed that policy justification and would be tantamount to allowing an isolated housing in the countryside, which was contrary to the provisions of Policy HD2.

The Review Body noted that the tourism use of the building had never commenced and therefore the viability of the business had not been tested by actual operation. Whilst noting the health condition of the applicant this would not, in their view, prevent the operation of the business as set out in the applicant's original business plan, or indeed, by other parties on his behalf. Members were not convinced a persuasive argument had been made to remove the condition or that the case set out by the applicant outweighed the strong planning policy objections.

CONCLUSION

After considering all relevant information, the Local Review Body concluded that the development was contrary to the Development Plan and that there were no other material considerations that would justify departure from the Development Plan. Consequently, the application was refused for the reasons stated above.

Notice Under Regulation 22 of the Town & Country Planning (Schemes of Delegation and Local Review procedure) (Scotland) Regulations 2013.

1. If the applicant is aggrieved by the decision of the planning authority to refuse permission for or approval required by a condition in respect of the proposed development, or to grant permission or approval subject to conditions, the applicant may question the validity of that decision by making an application to the Court of Session. An application to the Court of Session must be made within 6 weeks of the date of the decision.
2. If permission to develop land is refused or granted subject to conditions and the owner of the land claims that the land has become incapable of reasonably beneficial use in its existing state and cannot be rendered capable of reasonably beneficial use by the carrying out of any development which has been or would be permitted, the owner of the land may serve on the planning authority a purchase notice requiring the purchase of the owner of the land's interest in the land in accordance with Part V of the Town and Country Planning (Scotland) Act 1997.

Signed.....

Councillor S Mountford
Chairman of the Local Review Body

Date **3rd July 2023**